

Example of Problem 3

Case #: 695-2008

File Date: 10/23/2007

Update Date: 03/27/2008

Claim Type: WAGE AND HOUR

Subtype: NON-PAYMENT OF WAGES

Worker Name: CRAWFORD

Amount Claimed: 700.00

Claim Subtype No.:

Determination Goal Date: 12/17/2007

## \*\*\*\*\* PETITIONER \*\*\*\*\*

CRAMER, DWAYNE O

1011 COOK #3

BILLINGS, MONTANA 59101

Home: (406)861-6468

XXX-XX-3673

## \*\*\*\*\* RESPONDENT \*\*\*\*\*

SPAZIER, TIM

DBA: MAGIC CITY REPAIR AND AUTO BODY

BUSINESS

26 ORCHARD LN

BILLINGS, MONTANA 59102

Business: (406)248-8465

Ext

Cellular: (406)661-5091

Ext

## \*\*\*\*\* OTHER PARTICIPANT \*\*\*\*\*

## \*\*\*ACTION INFORMATION\*\*\*

Date	Type	DFLT REV	Detail Type	Action Text	Amount	Type
03/27/2008	DECISION	04/19/2008	REDETERMINATION		700.00	WAGES
					105.00	PENALTY
03/26/2008	APPEAL/JUDICIAL REVIEW		REQUEST REDETERMINATION			
03/21/2008	DECISION	04/13/2008			700.00	WAGES
					105.00	PENALTY
10/23/2007	LETTER		FIRST			
10/23/2007	NOTE			1		
10/23/2007	ASSIGNMENT		CRAWFORD, RENEE			

Balance Due: 805.00

## \*\*\*PAYMENT INFORMATION\*\*\*

Date	Amount	Type	Date	Amount	Type
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## \*\*\*NOTE INFORMATION\*\*\*

\$50.00 - WAGES  
\$650.00 - COMMISSION

EXHIBIT 3  
DATE 1/7/09  
HB 101

1 DEPARTMENT OF LABOR & INDUSTRY  
2 EMPLOYMENT RELATIONS DIVISION  
3 WAGE & HOUR UNIT  
4 PO BOX 6518  
5 HELENA MT 59601  
6  
7

8 STATE OF MONTANA  
9 BEFORE THE COMMISSIONER OF LABOR AND INDUSTRY  
10 WAGE AND HOUR UNIT  
11

12 CONCERNING THE WAGE CLAIM OF: ) Case No.: 695-2008  
13 Dwayne O. Cramer )

14 )  
15 ) Petitioner, ) REDETERMINATION  
16 and )  
17 )

18 Tim Spazier, d/b/a Magic City Repair and )  
19 Auto Body )  
20 )

21 Respondent )  
22

23  
24 **I. SUMMARY OF CLAIM**  
25

26 On October 23, 2007, Dwayne O. Cramer filed a claim with the Wage and Hour  
27 Unit of the Montana Department of Labor and Industry. The petitioner alleged to be  
28 owed \$700.00 in wages for work performed during the period of October 8, 2007 to  
29 October 17, 2007. Evidence, including the sworn statement of the claimant has been  
30 submitted in support of the claim.  
31

32 On October 23, 2007, a request was sent to the respondent for information  
33 pertaining to the above referenced claim. The respondent responded to the claim in  
34 writing on October 30, 2007.  
35

36 On March 21, 2008, a Determination was issued finding wages and penalty due  
37 to the petitioner.  
38

39 On March 26, 2008, the respondent timely requested a Redetermination stating:  
40

41 *"In regards to the recent letter your office sent us, we have recently received a*  
42 *letter from the County Attorneys Office stating that Mr. Cramer was, in fact, charged*  
43 *with the crime and has a trial set for May 05, 2008 at 9:00 A.M. If you have any other*  
44 *questions or need any further documentation you should be able to contact Martha*  
45 *Aquilar, at the Yellowstone County Attorney's Office, (406) 256-2871. Enclosed is a*  
46 *copy of the letter we received..."* Mr. Spazier provided this office with a copy of a  
47 Notice Of District Court Trial.  
48

49 On March 26, 2008, this compliance specialist contacted Ms. Aquilar via phone  
50 in which she transferred my call to Margaret Gallagher who is the Prosecuting Attorney.

1 Ms. Gallagher explained the police report was filed on October 17, 2008 and due to the  
2 heavy case load the charges were not entered into the court until January 10, 2008.  
3

4 This compliance specialist has subsequently reviewed all available information  
5 and has exchanged information with the parties when relevant to the claim.  
6  
7

## 8 II. FINDINGS AND REDETERMINATION 9

10 The Department of Labor and Industry, State of Montana has jurisdiction in the  
11 matter of this wage claim.  
12

13 The findings of the initial determination are incorporated by reference herein, the  
14 following is also found.  
15

16 Montana Codes Annotated section, 39-3-205 states:  
17

18 ***"39-3-205. Payment of wages when employee separated from employment***  
19 ***prior to payday -- exceptions.***

20 (1) *When an employee separates from the employ of any employer, all the*  
21 *unpaid wages of the employee are due and payable on the next regular payday*  
22 *for the pay period during which the employee was separated from employment or*  
23 *15 days from the date of separation from employment, whichever occurs first,*  
24 *either through the regular pay channels or by mail if requested by the employee.*

25 (2) *Except as provided in subsection (3), when an employee is separated*  
26 *for cause or laid off from employment by the employer, all the unpaid wages of*  
27 *the employee are due and payable immediately upon separation unless the*  
28 *employer has a written personnel policy governing the employment that extends*  
29 *the time for payment of final wages to the employee's next regular payday for the*  
30 *pay period or to within 15 days from the separation, whichever occurs first.*

31 (3) *When an employee is discharged by reason of an allegation of theft of*  
32 *property or funds connected to the employee's work, the employer may withhold*  
33 *from the employee's final paycheck an amount sufficient to cover the value of the*  
34 *theft if:*

35 (a) *the employee agrees in writing to the withholding; or*  
36 (b) *the employer files a report of the theft with the local law enforcement*  
37 *agency within 7 days of the separation from employment, subject to the following*  
38 *conditions:*

39 (i) *if no charges are filed in a court of competent jurisdiction against the*  
40 *employee for the alleged theft within 15 days of the filing of the report with a local*  
41 *law enforcement agency, wages are due and payable upon the expiration of the*  
42 *15-day period.*

43 (ii) *if charges are filed against the employee for theft, the court may order*  
44 *the withheld wages to be offset by the value of the theft. If the employee is found*  
45 *not guilty or if the employer withholds an amount in excess of the value of the*  
46 *theft, the court may order the employer to pay the employee the withheld amount*  
47 *plus interest."*  
48

49 The above cited law is specific regarding the time frames in which charges must  
50 be filed. This office does not have jurisdiction to deviate from this law.

1 Therefore, based upon the conversation with Ms. Gallagher the specified time  
2 frames were not met. Also, based upon the lack of substantial documentation from the  
3 respondent the time frames were not met.  
4

5 Thus, this compliance specialist finds based upon the information gathered from  
6 both the claimant and the employer, it is hereby found and redetermined that Tim  
7 Spazier, d/b/a Magic City Repair and Auto Body owes Dwayne O. Cramer \$700.00.  
8

9 It is further found and determined that the penalty provided by 39-3-206 MCA  
10 would apply in this case. If the wages determined are paid within the time specified  
11 below, a penalty of 15% totaling \$105.00 is also owed. However, if the wages and  
12 penalty are not paid by then, a penalty of 55% totaling \$385.00 will be owed.  
13

### 14 III. RESOLUTION

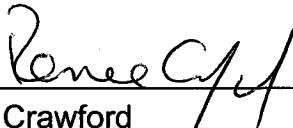
15  
16 This matter may be resolved by submitting a cashier's check or money order in  
17 the amount of \$805.00 (including the 15% penalty) as determined above made payable  
18 to the claimant and forwarded to the Employment Relations Division, PO Box 6518,  
19 Helena MT 59604-6518 within the time specified below. Appropriate state and federal  
20 withholdings should be made from the requested **wage** portion only and an itemized  
21 statement submitted.  
22

### 23 IV. APPEAL RIGHTS

24  
25 This Redetermination may be appealed. This request must be in writing, to the  
26 attention of Pam McDaniel, Supervisor Labor Standards Bureau, Employment Relations  
27 Division, PO Box 6518, Helena, MT 59604-6518. The Appeal (Hearing) request must  
28 be postmarked by 4-14-08.  
29

30 If an appeal is not filed, or payment is not made by the above stated date, this  
31 Redetermination will be final to the Wage and Hour Unit and an Order on Default will be  
32 issued in the amount of this Redetermination.  
33

34 Dated this 27 day of March, 2008 .  
35

36  
37   
38 \_\_\_\_\_  
39 Renee Crawford  
40 Compliance Specialist  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

\*\*\*\*\*  
**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing  
Redetermination was served upon the following on the 27<sup>th</sup> day  
of March, 2008, postage paid and addressed or delivered as indicated:

DWAYNE O CRAMER  
1011 COOK #3  
BILLINGS MT 59101

TIM SPAZIER  
D/B/A MAGIC CITY REPAIR AND AUTO BODY  
26 ORCHARD LN  
BILLINGS MT 59102

Amy Smith